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OGC Has Reviewed

OGC 74-1519
28 August 1974

MEMORANDUM FOR: Executive Officer/DDA

SUBJECT : Delegation of Authority to Waive
Ninety Percent Salary Limitation

[REDACTED]

STATINTL

REFERENCE : Your Memo, dated 15 August 1974;
Same Subject

Skip:

1. As I indicated in our conversation on 26 August, we have no legal objection to the Director delegating to the Deputy Director for Administration (DDA) the authority to approve requests for exceptions to the ninety percent limitation imposed [REDACTED] upon the salaries paid to U.S. Government civilian annuitants employed as contract employees or as independent contractors.

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2. As you indicate, the ninety percent limitation [REDACTED] [REDACTED] has no specific counterpart in law or in Civil Service Commission regulations and is a self-imposed restriction. I have thus far been unable to locate in our Office a specific paper establishing the salary restriction as Agency policy. The policy paper, if one exists, may repose in the Office of Personnel. The policy seems to have originated with the former DDA and Executive Director, Mr. L. K. White. He apparently felt that the salary restriction would dissuade annuitants from seeking a formal, continuing employment relationship with the Agency after retirement. Mr. White extended the ninety percent limitation to independent contractors, probably because there was (and still is) some question as to whether some of these contracts would withstand legal scrutiny and whether the contractors were (and are) in fact, truly independent contractors.

3. As you may be aware, a rehired annuitant is either an employee (regardless of whether we call him a consultant or contract employee) or is an independent contractor. As an employee, the annuitant can as a general rule receive as salary only the difference between his annuity and the salary of the position he is appointed to fill. There are several variations of this rule depending upon whether re-employment is under the same or a different retirement system and upon the basis for the annuitant's retirement (disability, involuntary, etc.). An independent contractor, however, may receive in salary whatever is agreed to by the contracting parties. The amount in the contract is in addition to whatever Federal retirement annuity the independent contractor may be receiving.

4. As I see it, there is no legal requirement for the ninety percent rule in the case of either a contract employee or an independent contractor. The ninety percent rule can have certain drawbacks, as for example in the recent case of the reemployment of [redacted] as Chairman, Security Committee, USIB. As a contract employee, [redacted] a Civil Service annuitant, receives in salary only the difference between his annuity (about \$25,500), and the salary of the position he is appointed to fill (\$36,000). Thus, [redacted] can only receive \$10,500 per year. The \$10,500 salary is reduced by ten percent, however, in order to conform to the ninety percent limitation contained [redacted]

5. For your information, I have attached a copy of my Note for the Record concerning the reemployment of [redacted] and a series of questions and answers concerning the reemployment of annuitants which is copied from a 1971 Civil Service Commission pamphlet. I am sure the Office of Personnel can provide additional material. If I can be of further assistance, do not hesitate to call.

[redacted]
Office of General Counsel /

Attachment